

1 BEFORE THE BOARD OF PERSONNEL APPEALS

2 THE STATE OF MONTANA, BY AND THROUGH
3 MICHAEL G. BILLINGS, DIRECTOR, OFFICE
4 OF BUDGET & PROGRAM PLANNING, STATE OF
5 MONTANA, AND ROBERT H. KATTON, DIRECTOR,
6 DEPARTMENT OF INSTITUTIONS, STATE OF
7 MONTANA,

8 Complainants:

9 v/s-

10 INDEPENDENT UNION OF WARM SPRINGS STATE
11 HOSPITAL AND ITS OFFICERS, LARRY ADAMS, PRESIDENT;
12 MIKE BEAUSOLEIL, VICE PRESIDENT; BART PAINTER,
13 SECRETARY; AND JOAN DOLANT, TREASURER.

14 UNFAIR LABOR
PRACTICES

15 #20 AND #21-1975

16 FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER.

17 Defendants,

18 and

19 INDEPENDENT UNION OF WARM SPRINGS STATE HOSPITAL,
20 AND ITS OFFICERS, LARRY ADAMS, PRESIDENT; MIKE
21 BEAUSOLEIL, VICE PRESIDENT; BART PAINTER, SECRETARY
22 AND JOAN DOLANT, TREASURER.

23 Complainants:

24 v/s-

25 DEPARTMENT OF INSTITUTIONS, STATE OF MONTANA,

26 Defendants.

27 I. STATEMENT OF CASE

28 The State of Montana filed an unfair labor practice charge against the
29 Independent Union of Warm Springs State Hospital on November 21, 1975
30 alleging violation of Section 59-1605(2)(b), R.C.M. 1947 by refusing to
31 bargain in good faith. Specifically the State of Montana alleged that the
32 union violated the collective bargaining statute by refusing to negotiate
33 the "recognition" clause. The union filed an answer on December 4, 1975
34 denying the charge. The union in its answer affirmatively alleged that
35 Michael G. Billings, Director of the Office of Budget and Program Planning
36 did not have standing to file a complaint because he is not the defendant's
37 employer under the laws of the State of Montana.

38 On December 15, 1975 the Independent Union at Warm Springs State
39 Hospital filed an unfair labor practice charge against the Department of
40 Institutions on behalf of Warm Springs State Hospital alleging violation of

Section 50-1605(1)(a), R.C.M. 1947. Specifically the union alleged that the employer violated the collective bargaining statute by insisting upon the negotiation of the size of the appropriate bargaining unit. The union further alleged that Michael G. Billings, Director of the Office of Budget and Program Planning is not the employer under the applicable statute. The union further alleged that the employer has violated Section 50-1605(1)(a) by attempting to interfere with, restrain and coerce employees who are proper members of the designated union. The Department of Institutions through its director Robert H. Nuttall answered the charge on January 8, 1976, stating that he was not the proper party to answer the charge and that the charge was improperly filed in that it should have been filed against the Director of the Office of Budget and Program Planning.

On February 18, 1976, the intervenor Michael G. Billings, Director of the Office of Budget and Program Planning, answered the charge denying the allegations and alleged that the Independent Union is guilty of an additional unfair labor practice charge in accordance with Section 59-1605(2)(a), R.C.M. 1947 by virtue of their persistent attempts to "restrain and coerce" the public employer State of Montana in its selection of a representative for collective bargaining purposes. The hearing on these charges was held March 22, 1976, before the Board of Personnel Appeals. Said hearing was conducted in accordance with the provisions of the Administrative Procedures Act (Section 82-4201 to 82-4305, Revised Codes of Montana 1947).

After thorough review of the entire record of the case, including sworn testimony, evidence and briefs, we make the following:

8. EXPLORE THE FACT

- 25 1. The Independent Union of Warm Springs State Hospital is the exclusive
26 representative for certain employees at that Institution by virtue of a
27 representation election conducted by the Department of Labor and Industry on
28 July 17, 1969.
29
30 2. Contract negotiations between the State of Montana and the Independent
31 Union at Warm Springs State Hospital were opened in December 1974 for a
contract expiring on January 1, 1975.

1 1. Subsequent negotiations were held on July 16, 1975, October 21, 1975,
2 November 5, and 20, 1975.

3 2. Article I of the previous collective bargaining agreement between
4 the above mentioned parties states:

5 When new classifications or reclassifications are initiated by
6 Management and are not clearly except by virtue of other Union
7 affiliation or by categorization as an Executive, Professional
8 or Administrative position, Management agrees to notify the
9 Union of said action and mutually negotiate the jurisdiction.

10 3. The July 16, 1975 meeting was spent in discussing positions described
11 in Article I of the contract. The union refused to negotiate Article I for
12 "recognition" during the November 5 and 20 sessions.

13 4. The union contends that they are required by law to represent the
14 interest of all members in the bargaining unit, this precludes them from
15 negotiating exclusions from the bargaining unit.

16 5. The employer contends that the only way it can make changes in the
17 bargaining unit is through the negotiation process since the Board of Personnel
18 Appeals' rules preclude the employer from filing a petition for unit modifi-
19 cation.

20 6. The union admitted during the course of the hearing that the collec-
21 tive bargaining statute provides that the chief executive of a jurisdiction
22 or his designee shall represent the public employer in negotiation with
23 exclusive representatives. Thus the union recognizes the right of Mr.
24 Michael Billings, Director, Office of Budget and Program Planning to represent
25 management in negotiations at Warm Springs State Hospital. Neither the union
26 or management presented evidence on this matter at the hearing.

27 III. DISCUSSION

28 A review of the arguments and briefs submitted in this matter indicate
29 that the course of negotiations entered into between the two parties was less
30 than model and involved a great deal of harassment on the part of both
31 parties. We especially want to impress upon the management negotiators
32 that this Board has every intention of protecting the statutory rights of
33 the Independent Union to represent employees at Warm Springs State Hospital.
34 We also want to remind the union negotiators that the collective bargaining

1 statute allows the Chief Executive Officer or the political sub-division or
2 his designee to represent the jurisdiction at the bargaining table.

3 After much deliberation we find that negotiation of a "recognition
4 clause" is a permissible subject of collective bargaining. Further, we find
5 the only solution which would be equitable to all parties involved is a
6 dismissal of the resulting unfair labor practice charges. Under other cir-
7 cumstances, however, we might easily find both parties in violation of the
8 collective bargaining statute.

9
10 IV. CONCLUSIONS OF LAW

11 The allegations of unfair labor practices #20 and #21 have not been
12 sustained.

13 V. ORDERS

- 14 1. Unfair labor practice charges #20 and #21 are dismissed.
15 2. Both parties are to immediately return to the bargaining table and
16 resume negotiations.

17 Dated this 30 day of June, 1976.

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19 BOARD OF PERSONNEL APPEALS
BY Brent Cronley
Brent Cronley, Chairman

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